

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Corwin	Team: Squad #10	CCRB Case #: 202002751	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 04/16/2020 12:18 AM	Location of Incident: West 49th Street and 8th Avenue	Precinct: 18	18 Mo. SOL 10/16/2021	EO SOL 5/4/2022	
Date/Time CV Reported Thu, 04/16/2020 3:56 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 04/16/2020 3:56 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Mcphee	03807	939003	TB DT01

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Paul Chaves	05038	925068	TB DT01

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Mcphee	Discourtesy: Police Officer Michael McPhee spoke discourteously to an individual.	
B.POM Michael Mcphee	Abuse: Police Officer Michael McPhee threatened an individual with the use of force.	

Case Summary

On April 16, 2020, § 87(2)(b) filed the following complaint via the CCRB website.

At approximately 12:18 a.m. on April 16, 2020, § 87(2)(b) was in his apartment on the corner of West 49th Street and 8th Avenue in Manhattan when he observed Police Officer Michael McPhee and Police Officer Paul Chaves, both of Transit Bureau District 1, in their police car on the street level interacting with a pedestrian. PO McPhee went over the PA system of the car and said, “Suck my dick. Suck my dick,” (**Allegation A: Discourtesy: Word:** § 87(2)(g)). The pedestrian responded and PO McPhee then said, “Shut the fuck up,” and then, “Fuck you,” followed by “Fuck you and shut up. You shut up. You suck. Eat a fat one. Suck a fat one,” (Also **Allegation A**). The pedestrian yelled back at the police car and PO McPhee said, “Shut the fuck up. Shut up. Shut the fuck up before I smack the shit out of you. I’ll smack the shit out of you,” (Also **Allegation A** and **Allegation B: Abuse of Authority: Threat of Force:** § 87(2)(g)). PO McPhee then said, “Shut the fuck up. Lick my balls. Lick my balls. Fuck you. Fuck you,” before he and PO Chaves drove away (Also **Allegation A**).

The CCRB obtained a cell phone video taken by § 87(2)(b) (**Board Review 01**), which was summarized by the investigation (**Board Review 02**). This case was added to the sensitive case list due to press coverage of the incident, which was detailed by the investigation (**Board Review 03**)

Findings and Recommendations

Allegation A: Discourtesy: Police Officer Michael McPhee spoke discourteously to

§ 87(2)(b)

Allegation B: Abuse of Authority: Police Officer Michael McPhee threatened § 87(2)(b) **with the use of force.**

§ 87(2)(b) provided a statement over the phone on April 20, 2020 (**Board Review 04**) and PO McPhee provided a statement at the CCRB on October 21, 2020 (**Board Review 05**). The CCRB was unable to identify the victim and PO Chaves was on terminal leave, so the investigation was unable to interview them.

It was undisputed that PO McPhee used profanity toward the pedestrian and threatened to “smack the shit out of him.”

§ 87(2)(b) cell phone (**Board Review 01**) was taken from his apartment, which is four stories above street level. The video captures a police car’s occupants interacting with a man on the street. In the video, the pedestrian yells inaudibly at the police car. Over the police car’s loudspeaker, a voice says, “Suck my dick. Suck my dick.” After the pedestrian yells inaudibly at the officers, the voice coming from the police car says, “Shut the fuck up,” and the man yells, “No” and something else inaudibly. The voice coming from the police car then says, “Shut up,” and the pedestrian yells back, “We gonna fuck you up.” The voice coming from the police car says, “Fuck you,” and the pedestrian starts yelling again. The voice from the police car speaks over him, saying, “Fuck you and shut up. You shut up. You suck. Eat a fat one. Suck a fat one.” The man starts yelling again and the voice from the police car says, “Shut the fuck up. Shut up. Shut the fuck up before I smack the shit out of you. I’ll smack the shit out of you.” The police car starts to drive away, and the man yells, “Stop.” The voice from the police car says, “shut the fuck up. Lick my balls. Lick my balls. Fuck you. Fuck you.”

§ 87(2)(b) statement was generally consistent with his video.

PO McPhee acknowledged that the voice coming over the PA system of the police car was his and that PO Chaves did not say anything to the pedestrian during the incident. He stated that he knew this individual and had interacted with him multiple times over the years prior to this incident. The individual was a homeless man who hung out in the sector PO McPhee patrolled and he and PO McPhee would often times go back and forth with each other using profane language, but PO McPhee stated that their interactions were good natured and joking and that PO McPhee would give this individual coffee or cigarettes on occasion.

During this incident, the pedestrian was in the street blocking a sanitation truck from passing. When PO McPhee and PO Chaves pulled up, the sanitation workers got back in their car and drove away. At this point, the pedestrian saw that the officers were PO McPhee and PO Chaves and because he recognized them when he got on the sidewalk. The individual said something to PO McPhee and they started going back and forth using profanity. Because of the Covid19 pandemic, PO McPhee did not want to get out of his car, so he used the PA system while speaking to the individual. He stated that he used the language he did because that was the way he and this individual interacted and communicated with each other and it was understood by both parties that this way of communicating was playful. PO McPhee stated that this individual can get very excited and out of control and that when they interacted and joked around in the past, it has calmed him down. He stated that he used the language he did during this interaction because based on his previous experiences, it would bring this individual “down a level.” There was no other law enforcement purpose for using this language.

PO McPhee stated that when he said, “Shut the fuck up before I smack the shit out of you,” he was not making a threat of force but just joking around. When asked if there was any reason to use force against this individual PO McPhee said there was not. PO McPhee said that this individual was harmless and not a threat.

Patrol Guide Procedure 200-02 states that the department is committed to treating every citizen with compassion, courtesy, professionalism, and respect. Officers are expected to maintain a higher standard of integrity than is generally expected of others (**Board Review 06**).

Patrol Guide Procedure 221-01 states that officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances (**Board Review 07**).

§ 87(2)(g)

[REDACTED]

PO McPhee also stated that when he said, “Shut the fuck up before I smack the shit out of you. I’ll smack the shit out of you,” he was joking and did not intend for this statement to be taken as an actual threat of force towards the individual. § 87(2)(g)

[REDACTED]

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 08**).
- Police Officer McPhee has been a member of service for fifteen years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- A request for any Notice of Claim regarding this incident has been submitted to the New York City Comptroller's Office, and the results will be added to the case file upon receipt.
- § 87(2)(b), § 87(2)(c)

Squad No.: 10

Investigator:	<u>Matthew Corwin</u>	<u>Inv. Corwin</u>	<u>11/09/2020</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Eric Rigie</u>	<u>IM Eric Rigie</u>	<u>11/13/2020</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date